

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 16-56057; 16-56287

SKIDMORE

*Michael Skidmore, Trustee for the
Randy Craig Wolfe Trust
Plaintiff-Appellant/Cross Appellee*

v.

LED ZEPPELIN *ET AL.*
Defendants-Appellees

and

WARNER/CHAPPELL MUSIC, INC.
Defendant, Cross Appellant

APPELLANT SKIDMORE'S MOTION TO PLAY AUDIO

(Music copyright infringement, on appeal from the final Order dated June 23, 2016 of the Honorable R. Gary Klausner, of the United States District Court for the Central District of California. The case was docketed in the Central District at 15-cv-03462)

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Plaintiff Michael Skidmore (Appellant and Cross-Appellee), as Trustee for the Randy Craig Wolfe Trust (“Skidmore” or “Plaintiff”), hereby moves for permission to play certain audio exhibits for the Court in this music copyright infringement action.

The exhibits that will be played were transmitted to the Court with Dkt Entry 14:

Audio Exhibit 7:

Stairway to Heaven (0 seconds – 25 seconds)

Audio Exhibit 8:

Taurus (45 seconds – 1 minute, 13 seconds)

Audio Exhibit 9:

8 measures of Stairway from note 1 of the acoustic guitar, repeated multiple times

Audio Exhibit 10:

8 Measures of Taurus from note 1 of the acoustic guitar, repeated multiple times

Audio Exhibit 11:

8 measures of Stairway and Taurus played together from note 1 of the acoustic guitar, repeated multiple times

The crucial issue in this appeal is whether the copyright infringement comparison should use the full composition of “Taurus” as it was composed by Randy Wolfe and copied by defendant Jimmy Page, or the incomplete deposit copy which was later created by Wolfe’s publisher specifically for the registration (which Page never saw or knew about).

Appellant Skidmore will not recap the legal arguments at issue here, but notes that Led Zeppelin only wants the deposit copy to be used because they will lose the case if the full composition of “Taurus” is used. This is because the full composition of “Taurus,” as created and featured on the *Spirit* album, is the composition that Page owned and copied (and which is strikingly similar to “Stairway to Heaven”); Page admitted he never saw the deposit lead sheet outline of “Taurus” in the Copyright Office, nor did any member of Led Zeppelin, Spirit, or Randy Wolfe.

It is thus critical that the Court hear the complete composition of “Taurus” copied by Page compared to the relevant portion of “Stairway to Heaven” so the assembled jurists can hear the salient comparison that Led Zeppelin wants kept from the jury. Note also that Led Zeppelin and its allies are arguing, incorrectly, that only virtually identical songs can be infringing—the comparison to be played will show that the two songs are in fact virtually identical.

Lastly, the Court also needs to hear the comparison audio in light of Appellant’s Three Boys Music prejudice argument. See Three Boys Music Corporation v. Bolton, 212 F.3d 477, 486-87 (9th Cir. 2000) (stating that inaccuracies in the deposit copy should be disregarded if no prejudice to defendants). Even if the Court credits Led Zeppelin’s argument that the scope of a song’s protected composition should be limited to the deposit copy, Appellant is arguing that where deposit copies are incomplete or erroneous, the full composition should be used if it

is determined there would be no prejudice to the defendants to disregard the incompleteness of the deposit. See DktEntry 18, at p.35; DktEntry 149, at p.14.

The audio to be played will show that there can be no prejudice to the Led Zeppelin defendants because the full composition of “Taurus” Appellant wants used is in fact the composition that defendant Page actually copied (and is strikingly similar to Page’s song). Page never heard and did not copy the deposit lead sheet the Led Zeppelin defendants bizarrely want used for the comparison.

Note that Appellant Skidmore will be playing the audio on a handheld cell phone that has a speaker capable of playing the audio at an acceptable volume.

Respectfully submitted,

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September 13, 2019

Certificate of Filing and Service

Counsel was served via CM/ECF which constitutes service, pursuant to Fed.

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